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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120813333-2647-01]

RIN 0648-BC28

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 17 to the Salmon Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 17 to the Pacific Coast Salmon Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP). Amendment 17, which was transmitted by the Pacific Fishery Management Council (Council) on November 5, 2012, to the Secretary of Commerce (Secretary) for review and approval, revises the maximum fishing mortality threshold (MFMT) for Quillayute fall coho, revises the FMP to correct typographical errors, updates reporting measures to reflect new technology, and updates or removes other obsolete or unnecessary language. The Northwest Regional Administrator has determined that the actions of Amendment 17 have all either been previously analyzed in a NEPA document or qualify for categorical exclusion (CE) from further NEPA analysis under NAO 216-6. NMFS also proposes minor updates to regulations unrelated to Amendment 17.

DATES: Written comments on this proposed rule must be received on or before January 8, 2013.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2012-0192, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, enter NOAA-NMFS-2012-0192 in the search box. Locate the document you wish to comment on from the resulting list and click on the “Comment Now” icon on the right of that line.
- Mail: William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115-0070 or to Rod McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213
- Fax: 206-526-6736 Attn: Peggy Mundy, or 562-980-4047 Attn: Heidi Taylor

Instructions: Comments must be submitted by one of the above methods to ensure that they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you

wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Information relevant to this proposed rule, which includes a CE, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) are available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503-820-2280, and are posted on its website (www.pcouncil.org). These documents are also linked on the NMFS Northwest Region website (www.nwr.noaa.gov). Copies of additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206-526-4323, or Heidi Taylor at 562-980-4039.

SUPPLEMENTARY INFORMATION:

Background

In 2011, NMFS partially approved Amendment 16 to the Salmon FMP. Amendment 16 established status determination criteria (SDC), and other management metrics, for stocks managed under the Salmon FMP. Regulatory changes to implement the approved portions of Amendment 16 were made effective in a Final Rule (76 FR 81851, December 29, 2011). In a letter to the Council, dated December 11, 2011, NMFS detailed the disapproval of one SDC, the proposed maximum fishing mortality threshold (MFMT) for Quillayute fall coho, and recommended that the Council submit an FMP amendment to address this item. In the course of reviewing Amendment 16, a variety of other, unconnected, issues were identified as needing revision in the FMP, largely to correct typographical errors, update notification and reporting measures to reflect new technology, and respond to a regulatory procedure issue in the schedule

for annual management measures. However, these were identified after the Council had transmitted Amendment 16 to NMFS for approval. Amendment 17 has been developed to address the Quillayute fall coho MFMT and 14 other issues.

The Council transmitted the amendment to NMFS on November 5, 2012. NMFS published a Notice of Availability in the Federal Register (77 FR 67327, November 9, 2012) to notify the public of the availability of the amendment and invite comments

This proposed rule identifies changes to the regulations under 50 CFR 660 subpart H to implement Amendment 17. The Council has deemed the proposed regulations to be necessary and appropriate as required by section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This proposed rule also updates regulations under the same subpart, unrelated to Amendment 17, to remove obsolete text and update terminology.

Components of Amendment 17

The issues addressed by Amendment 17 are described below, in the order in which they affect the FMP.

FMP Chapter 3 – Conservation

Amendment 17 Issue #1. Quillayute fall coho has an undefined MFMT, as shown in FMP table 3-1. This occurred because NMFS disapproved of the MFMT recommended by the Council under Amendment 16. Under Amendment 16, the Council recommended adopting an MFMT of 0.65 for all Washington Coast coho, to be consistent with the maximum exploitation rate allowed under the Pacific Salmon Treaty 2002 Southern Coho Management Plan. However, the Council had already accepted the Scientific and Statistical Committee approved estimate of 0.59 as the best estimate of F_{MSY} for Quillayute fall coho, as presented in Appendix E of the Amendment 16 Environmental Assessment. Because MFMT cannot exceed F_{MSY} , that element

of Amendment 16 was not approved and therefore, MFMT is currently undefined for Quillayute fall coho in the FMP. Amendment 17 adopts 0.59 for the value of MFMT for Quillayute fall coho.

Amendment 17 Issues #2 and #3. Amendment 17 corrects typographic errors for six Chinook salmon stocks listed in FMP Table 3-1, including erroneous inclusion in the Far North Migrating Coastal Chinook stock complex of two Columbia River Chinook stocks (Columbia River Upper River Bright Fall and Columbia Upper River Summer), and erroneous MFMT values for four stocks (Smith River, Southern Oregon, Central and Northern Oregon, and Quillayute Spring/Summer).

FMP Chapter 5 - Harvest

Amendment 17 Issue #4. A description of Endangered Species Act (ESA) listed Chinook salmon is corrected to include federal ESA listing of two stocks .

Amendment 17 Issue #5. The description of methodology to estimate abundance for Oregon Production Index (OPI) coho is updated to reflect recent changes in scientific methodology.

Amendment 17 Issue #6. The discussion of management considerations for coho salmon north of Cape Falcon is updated to reflect recent consideration of impacts to two coho stocks.

Amendment 17 Issue #7. The description of impacts to pink salmon from the ocean fishery is updated to reflect recent analyses of exploitation rate for pink salmon, conducted since the Council adopted Amendment 16.

FMP Chapter 6 - Measures to Manage the Harvest

Amendment 17 Issue #9. The discussion of minimum size limits is updated to better describe recent trends in how these management measures are used.

Amendment 17 Issue #10. The terminology for mark-selective fisheries is updated.

FMP Chapter 7 - Data Needs, Data Collection Methods, and Reporting Requirements

Amendment 17 Issues #11 and #12. Amendment 17 updates technology used to collect and report data from the fishery.

FMP Chapter 9 - Schedule and Procedures for Preseason Modification of Regulations

Amendment 17 Issue #8. Amendment 17 removes mention of a public comment period after final management measures are published in the Federal Register. Annual management measures for the salmon fishery are published in the Federal Register as a final rule; public comment periods are not applied to final rules. The public has an opportunity to comment throughout the Council's process of setting annual management measures, which includes two Council meetings and public hearings held in Washington, Oregon, and California. The Council publishes a notice in the Federal Register each December that details the process for setting the next year's annual management measures and solicits comments. The Council's notice provides the schedule for Council meetings and public hearings, as well as the schedule of availability of planning documents, including Preseason Report II which contains the salmon management alternatives the Council adopts in March for further consideration at its April meeting where it adopts a final recommendation for the fishing season. The Council's notice informs the public of how to request copies of the preseason planning documents, how to view the documents online, and how to submit comments to the Council by mail, fax, email, or the Federal Rulemaking Portal: www.regulations.gov. All comments received are reviewed by both the Council and NMFS.

FMP Chapter 10 – Inseason Management Actions and Procedures

Amendment 17 Issues #13 and #14. The language regarding notification and procedures for inseason actions is updated to reflect current technology and policies.

FMP Chapter 11 – Schedule and Procedures for FMP Amendment and Emergency Regulations

Amendment 17 Issue #15. The procedures for FMP amendment and emergency regulations are updated to be consistent with the MSA.

Changes to Regulations

This proposed rule includes changes to the existing regulations at 50 CFR 660.401 et seq., to implement Amendment 17, and to make additional updates. These are described below.

- Definitions (§ 660.402)

The definition of “Dressed, head-off length” of salmon is updated to remove reference to Figure 3 which no longer appears in the regulations. This is a general correction, not a component of Amendment 17.

- Exempted fishing (§ 660.406)

The reference to “Regional Director” is updated to the current term “Regional Administrator.” This is a general correction, not a component of Amendment 17.

- Annual actions (§ 660.408)

The references to “Regional Director” are updated to the current term “Regional Administrator,” and the word Chinook is capitalized. These are general corrections, not components of Amendment 17.

- Notification and publication procedures (§ 660.411)

Language providing for a public comment period after an action is effective is removed., and information on availability of data is updated.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 17, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Northwest Regional Administrator has determined that the actions of Amendment 17 have all either been previously analyzed in a NEPA document or qualify for categorical exclusion from further NEPA analysis under NAO 216-6.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the SUMMARY and Classification sections of this proposed rule. A copy of the IRFA is available from NMFS (see ADDRESSES). The IRFA is expected to provide a : (1) description of the reasons why action by the agency is being considered; (2) succinct statement of the objectives of, and legal basis for, the proposed rule; (3) description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule. The IRFA is also to expected to contain a description of any significant alternatives to the proposed

rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as: (1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for such small entities; and (3) using performance rather than design standards; and (4) exempting from coverage of the rule, or any part thereof, such small entities.

The reasons for why this action is being considered and the statement of objectives and legal basis for the proposed rule are discussed above in the SUMMARY and Classification sections of this proposed rule. The number of small entities that are affected is discussed below along with the other IRFA requirements.

The commercial entities directly regulated by the Pacific Council's Fishery Management Plan are non-tribal commercial trollers, tribal commercial trollers, and charterboats. During 2011, the most recent year for which NMFS has data, these fleets consisted of estimated 802 non-tribal trollers, 40 to 50 tribal trollers, and 438-495 charterboats. Accordingly, NMFS estimates this rule, if implemented, will impact approximately 1,300 small entities involved in the fishery.

Based on Pacific Coast Fisheries Information Network (PacFIN) data, a total of 802 non-tribal vessels participated in the West Coast commercial salmon fishery in 2011. This figure is 25 percent more than participated in 2010 (642), two-and-a-half times the number that participated in 2009 (313), and three-and-a-half times the number participating in 2008 (221). Total 2011 ex-vessel value of the Council-managed non-Indian commercial salmon fishery was

\$9.2 million, an increase of 26 percent over the prior year (adjusted for inflation). Ex-vessel value was nearly six times above its 2009 level (\$1.6 million) and 85 percent lower than the 1979 through 1990 inflation-adjusted average of \$60.7 million, and 41 percent above the recent five-year (2006-2010) inflation-adjusted average of \$6.5 million. In 2011, the coastwide average inflation-adjusted ex-vessel value of salmon landings increased slightly compared to 2010, to \$10,500 per non-tribal vessel (approximately 385 of these trollers account for 90% of the revenues for an average revenue of \$22,000). Treaty Indian commercial fisheries off Washington operate under regulations established by the Council. While some of the treaty Indian harvest is for ceremonial and subsistence purposes, the vast majority of the catch is sold commercially. Commercial treaty Indian fisheries provide food to consumers and generate income in local and state economies through expenditures on harvesting, processing, and marketing of the catch. According to a Northwest Indian Fisheries Commission representative, the tribal fleet consists of 40 to 50 trollers. For 2011 the preliminary ex-vessel value of Chinook and coho landed in the treaty Indian ocean troll fishery was \$1.7 million, compared with inflation-adjusted ex-vessel values of \$1.37 million in 2010 and \$1.0 million in 2009 (values based on PacFIN data). During 2011, the tribal troll harvest was worth \$1.7 million exvessel, implying that the average revenue per tribal troller ranges from \$34,000 to \$42,500.

A fish-harvesting business is considered a “small” entity by the Small Business Administration (SBA) if it has annual receipts not in excess of \$4.0 million. For marinas and charter/party boats, a small entity is one with annual receipts not in excess of \$6.5 million. All of the businesses that would be affected by this action are considered small under SBA guidance. Average 2011 tribal and non-tribal vessel revenues are approximately \$13,000 per vessel. Charterboats participating in the recreational salmon fishery in 2000 had average revenues

ranging from \$7,000 to \$131,000, depending on vessel size class (Pacific States Marine Fisheries Commission study). These figures remain low, and NMFS has no information suggesting that these vessels have received annual revenues since 2000 such that they should be considered “large” entities under the RFA. As these average revenues are far below SBA’s thresholds for small entities, NMFS has determined that all of these entities are small entities under SBA’s definitions.

There are no new reporting or recordkeeping requirements. There are no relevant Federal rules that may duplicate, overlap, or conflict with this action. As the proposed regulations are administrative in nature, there are no significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any of the significant economic impact of the proposed rule on small entities. NMFS estimates that this rule will affect approximately 1,300 small entities. Under the RFA, an agency does not need to conduct an IRFA and/or Final Regulatory Flexibility Analysis (FRFA), if an agency can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The regulations being proposed are administrative in nature. Consequently, NMFS believes that this rule does not meet any of the tests of having a "significant" economic impact on a "substantial number" of small entities, nor does NMFS believe that this rule will place a substantial number of small entities at a significant competitive disadvantage compared to large entities. Nonetheless, NMFS has prepared an IRFA. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

The proposed rule is administrative in nature and does not affect ESA listed species. However, NMFS has issued a number of ESA biological opinions that address the impacts of the Council managed salmon fisheries on listed salmonids as follows: March 8, 1996 (Snake River

spring/summer and fall Chinook and sockeye), April 28, 1999 (Oregon Coast natural coho, Southern Oregon/Northern California coastal coho, Central California coastal coho), April 28, 2000 (Central Valley spring Chinook), April 27, 2001 (Hood Canal summer chum 4(d) limit), April 30, 2004 (Upper Willamette Chinook, Upper Columbia spring Chinook, Lake Ozette sockeye, Columbia River chum), April 30, 2004 Puget Sound Chinook, June 13, 2005 (California coastal Chinook), April 28, 2008 (Lower Columbia River natural coho), and April 30, 2010 (Sacramento River winter Chinook, and listed Puget Sound yelloweye rockfish, canary rockfish, and bocaccio), and April 26, 2012 (Lower Columbia River Chinook). NMFS reiterates its consultation standards for all ESA-listed salmon and steelhead species in their annual Guidance letter to the Council. In 2009, NMFS consulted on the effects of fishing under the Salmon FMP on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW (biological opinion dated May 5, 2009).

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with Tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 14, 2012.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq. and 16 U.S.C. 773 et seq.

2. In § 660.402, revise the definition for “Dressed, head-off length of salmon” to read as follows:

§ 660.402 Definitions.

* * * * *

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails.

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3. In § 660.406, revise paragraph (c) to read as follows:

§ 660.406 Exempted fishing.

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(c) Each vessel participating in any exempted fishery recommended by the Council and allowed by NMFS is subject to all provisions of this subpart, except those portions which relate to the purpose and nature of the exempted fishery. These exceptions will be specified in a permit issued by the Regional Administrator to each vessel participating in the exempted fishery and that permit must be carried aboard each participating vessel.

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4. In § 660.408, revise paragraphs (d)(1)(vii) and (d)(2)(v) to read as follows:

§ 660.408 Annual actions.

* * * * *

(d) * * *

(1) * * *

(vii) Other inseason provisions. Any increase or decrease in the recreational or commercial allowable ocean harvest resulting from an inseason restructuring of a fishery or other

inseason management action does not require reallocation of the overall non-treaty allowable ocean harvest north of Cape Falcon between the recreational and commercial fisheries. Inseason redistribution of subarea quotas within the recreational fishery or the distribution of allowable coho catch transfers from the commercial fishery among subareas may deviate from the preseason distribution. Inseason management actions may be taken by the Regional Administrator to assure meeting the primary objective of achieving all-species fisheries without imposing Chinook restrictions in each of the recreational subareas north of Cape Falcon. Such actions might include, but are not limited to: Closure from 0 to 3, 0 to 6, 3 to 200, or 5 to 200 nm from shore; closure from a point extending due west from Tatoosh Island for 5 nm, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from North Head at the Columbia River mouth north to Leadbetter Point; change in species that may be landed; or other actions as prescribed in the annual management measures.

* * * * *

(2) * * *

(v) Inseason reallocation. No later than August 15 each year, the Salmon Technical Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery that are not needed to complete the recreational seasons will be reallocated to the commercial fishery. Once reallocation has taken place, the remaining recreational quota will change to a harvest guideline. If the harvest guideline for the recreational fishery is projected to be reached on or before Labor Day, the Regional Administrator may allow the recreational fishery to continue through the Labor Day weekend only if there is no significant danger of impacting the allocation of another fishery or of failing to meet an escapement goal.

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5. In § 660.411, revise paragraphs (b) and (c) to read as follows:

§ 660.411 Notification and publication procedures.

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(b) Public comment. If time allows, NMFS will invite public comment prior to the effective date of any action published in the Federal Register.

(c) Availability of data. The Regional Administrator will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review upon request, contact information will be published annually in the Federal Register and announced on the telephone hotline. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevant to the action also will be made available upon request by the Southwest Region, NMFS.

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[FR Doc. 2012-30598 Filed 12/18/2012 at 8:45 am; Publication Date: 12/19/2012]